

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 165

SENATE BILL 1194

AN ACT

AMENDING SECTION 30-222, ARIZONA REVISED STATUTES; REPEALING SECTIONS 30-223, 30-224 AND 30-225, ARIZONA REVISED STATUTES; AMENDING SECTIONS 30-226, 30-227 AND 48-101, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-102; RELATING TO REVENUE BONDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 30-222, Arizona Revised Statutes, is amended to
3 read:

4 30-222. Prerequisites to issuance

5 A. No revenue bonds shall be issued until provision is made by power
6 OR TRANSMISSION purchase contracts in accordance with the provisions of this
7 chapter adequate in the judgment of the authority to insure all necessary
8 fiscal reserves, operation costs, maintenance and depreciation charges and
9 payment of principal and interest of any bonds relating to any proposed
10 project or facility involved and within the time fixed. ~~Revenue bonds shall~~
11 ~~not be issued except upon requisition by the authority and approval by the~~
12 ~~state certification board, and no agreement, proposal or arrangement relating~~
13 ~~to or concerning the handling, sale, control or disposition of authority~~
14 ~~bonds, or relating to employment, or payment of fees of bond brokers or~~
15 ~~dealers, attorneys, engineers or accountants relating to or concerning the~~
16 ~~bond issue shall be of any force or effect unless and until approved by the~~
17 ~~state certification board.~~

18 B. ~~Requisitions for approval of a bond issue or issues shall state the~~
19 ~~amount of the proposed issue or issues, the proposed interest rate and types~~
20 ~~and terms of bonds, that all other methods of necessary financing by the~~
21 ~~authority have been found impractical, inadvisable or inadequate and that the~~
22 ~~issuance of the bonds is necessary and advisable as proposed.~~

23 C. ~~Requisitions shall be signed by the authority chairman and~~
24 ~~secretary and in support of the requisition the authority shall file, in such~~
25 ~~form, manner and content as the state certification board may by rule or~~
26 ~~regulation prescribe, pertinent engineering, economic and financial data,~~
27 ~~appropriate maps, drawings, plans, outlines, calculations, summaries, related~~
28 ~~agreements and any other essential information constituting a record~~
29 ~~appropriate to the requisition.~~

30 Sec. 2. Repeal

31 Sections 30-223, 30-224 and 30-225, Arizona Revised Statutes, are
32 repealed.

33 Sec. 3. Section 30-226, Arizona Revised Statutes, is amended to read:

34 30-226. Issuance of bonds; provisions of bonds

35 A. Bonds issued under this article shall be authorized by resolution
36 of the authority and may be issued in one or more series, shall bear such
37 date or dates, mature at such time or times, bear interest at such rate or
38 rates, not exceeding nine per cent per annum, be in such denomination or
39 denominations and in such form, either coupon or registered, carry such
40 conversion or registration privileges, have such rank or priority, be
41 executed in such manner, payable in such medium of payment, at such place or
42 places, and subject to such terms of redemption, with or without premium, as
43 such resolution, any trust indenture, or the bonds so issued may provide.
44 Bonds may be sold at public or private sale at ~~not less than par~~ PREMIUM,
45 DISCOUNT OR PAR with accrued interest. Notwithstanding any provision of law

1 to the contrary, bonds issued pursuant to this article shall be negotiable.
2 THE PROCEEDS OF THE BOND ISSUE SHALL BE CONTROLLED AND ADMINISTERED SOLELY BY
3 THE AUTHORITY AS PROVIDED IN THIS CHAPTER.

4 B. The bonds shall provide that:

5 1. The bond is purchased and taken after a complete disclosure of and
6 with a full knowledge of all the surrounding relevant facts and circumstances
7 and not upon the representation, faith or credit of the state of Arizona or
8 any of its subdivisions.

9 2. The holder in order to obtain payment may not compel the state or
10 any subdivision thereof to exercise its appropriation or taxing power.

11 3. The bond does not constitute a debt of the state and is payable
12 only from revenues of the authority.

13 C. The gross or net revenue of any project or any part thereof may be
14 pledged to secure payment of any series of bonds.

15 Sec. 4. Section 30-227, Arizona Revised Statutes, is amended to read:

16 30-227. Additional provisions of bonds; certification by
17 attorney general; sale

18 A. The authority may provide for reimbursement to the holder of all
19 expenses of litigation and attorney fees incurred in collection of the bonds
20 in the event of default, and may provide for and fix the powers and duties of
21 a trustee if necessary to enforce collection. Bond resolutions, agreements
22 and bonds may be in such form and contain such other conditions and terms as
23 the authority deems appropriate or necessary to make the bonds fully salable
24 and marketable.

25 B. The authority may provide that any holder of bonds, or a trustee
26 designated by the authority at the time of issuing the bonds, may upon proper
27 showing secure by mandamus, or other proper proceedings, an order of court
28 requiring the authority, subject to the provisions of contracts with
29 purchasers of electrical energy OR TRANSMISSION SERVICE from the authority
30 then in effect, to fix and collect rates and charges which will produce
31 revenues and income permitting the setting up of adequate yearly reserves
32 with which to meet future payments in accordance with the terms of the bond.

33 C. All bonds issued by the authority and agreements of the authority
34 with respect thereto shall be subject to the provisions of this chapter, and
35 no bond or agreement shall contain any provisions in conflict with this
36 chapter. No amendment of this chapter shall ever diminish or impair the
37 remedy and rights of the bondholder.

38 D. The bonds shall be signed by the chairman or vice-chairman and the
39 secretary of authority in office at the date of signing, and shall be valid
40 obligations of the authority although before delivery or sale the persons
41 whose signatures appear on the bonds have ceased to be members of the
42 authority.

43 E. The validity of the bonds shall not be dependent on or affected by
44 the legality of any proceeding relating to the acquisition, construction,
45 improvement or extension of a project for which the bonds are issued. The

1 bonds shall recite that they are regularly issued pursuant to this chapter
2 and such recital shall be prima facie evidence of their legality and
3 validity.

4 F. Before delivery or sale the authority may submit the bonds to the
5 attorney general of the state, and he shall examine them and inquire into the
6 legality of all proceedings bearing upon the validity of the bonds. If
7 satisfied that they are legally issued, he shall certify in substance on the
8 back of each bond that it is issued in accordance with the constitution and
9 laws of this state.

10 G. Bonds so issued may be sold if and when the money is needed for the
11 purposes for which they were issued. Pending the preparation or execution of
12 definite bonds, interim receipts or certificates or temporary bonds may be
13 delivered to the purchaser or purchasers of bonds.

14 Sec. 5. Section 48-101, Arizona Revised Statutes, is amended to read:
15 48-101. State certification board

16 A. The state certification board shall consist of the attorney
17 general, the director of water resources and the superintendent of financial
18 institutions.

19 B. The board shall elect one of its members chairman, and appoint a
20 secretary who shall keep the records and minutes of the board. One or more
21 members of the board shall from time to time, as may be required, designate
22 from his or their regularly employed personnel the secretary and such clerks
23 and assistants as are necessary to perform the duties of the board but
24 without extra compensation.

25 C. THE GOVERNOR SHALL BE AN EX OFFICIO MEMBER OF THE BOARD WITHOUT
26 ADDITIONAL COMPENSATION. THE OFFICE OF THE BOARD SHALL BE AT PHOENIX, WHERE
27 RECORDS CONCERNING ALL PROCEEDINGS TAKEN UNDER THIS ARTICLE SHALL BE KEPT.

28 D. THE BOARD SHALL MEET ON A CALL OF THE CHAIRMAN OR ON THE WRITTEN
29 REQUEST OF THREE OF ITS MEMBERS AT A FIXED TIME WITHIN OFFICIAL BUSINESS
30 HOURS, ON NOT LESS THAN TWO DAYS PRIOR WRITTEN NOTICE, BUT NOTICE MAY BE
31 WAIVED IN WRITING. MEETINGS MAY BE RECESSED OR ADJOURNED FROM TIME TO TIME
32 WITHOUT GIVING FURTHER NOTICE AND CONTINUANCES MAY BE GRANTED FOR GOOD CAUSE.
33 A MAJORITY SHALL CONSTITUTE A QUORUM AND MATTERS PENDING BEFORE THE BOARD
34 SHALL BE DECIDED BY MAJORITY VOTE. THE BOARD SHALL BE AUTHORIZED TO ADOPT
35 AND PROMULGATE NECESSARY RULES OF PROCEDURE AND REGULATIONS FOR THE CONDUCT
36 OF ITS AFFAIRS AND DISCHARGE OF ITS DUTIES UNDER THIS ARTICLE. NO FEES OTHER
37 THAN FOR NECESSARY STENOGRAPHIC SERVICES, PRINTING OR PUBLICATION, SHALL BE
38 CHARGED OR COLLECTED FROM THE APPLICANT BY THE BOARD.

39 E. THE SCOPE AND SUBJECTS OF THE BOARD'S EXAMINATION, CONSIDERATION
40 AND DETERMINATION SHALL BE CONFINED TO THE MATTERS PRESCRIBED AND EMBRACED IN
41 THE RECORD FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION AND ITS
42 PROPOSED BOND ISSUE, PROOF OFFERED IN RESPECT THERETO, AND THE ADEQUACY,
43 WEIGHT AND SUFFICIENCY THEREOF TO JUSTIFY THE PROPOSED BOND ISSUE.

1 Sec. 6. Title 48, chapter 1, article 1, Arizona Revised Statutes, is
2 amended by adding section 48-102, to read:

3 48-102. Findings of state certification board

4 A. IF THE STATE CERTIFICATION BOARD FINDS THAT THE RECORD OFFERED IN
5 SUPPORT OF THE APPLICATION SUBMITTED SUSTAINS THE APPLICATION AND THAT ALL
6 REQUIREMENTS AND CONDITIONS PRECEDENT HAVE BEEN FULFILLED, IT SHALL APPROVE
7 THE BOND APPLICATION EITHER IN WHOLE OR IN PART, OR SHALL OTHERWISE
8 DISAPPROVE THE BOND ISSUE AS A WHOLE OR AS TO THE FEATURES OR PROPOSALS THAT
9 DO NOT MEET ESSENTIAL REQUIREMENTS. WHEN THE BOARD HAS MADE AND ENTERED ITS
10 FINDINGS, A DECISION SHALL BE MADE ACCORDINGLY. THE REJECTION OF ANY
11 DOCUMENT OR REPORT OR THE CONTENTS OF THE DOCUMENT OR REPORT OR THE REJECTION
12 OF AN ENTIRE APPLICATION SHALL NOT PRECLUDE FILING AMENDED APPLICATIONS,
13 DOCUMENTS, REPORTS, STATISTICS, PLANS, MAPS OR OTHER RECORDS OR THE
14 SUBSEQUENT CONSIDERATION OF ANY AMENDED OR ALTERED BOND PROPOSAL.

15 B. THE DECISION OF THE STATE CERTIFICATION BOARD BASED ON FINDINGS OF
16 FACT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND THAT ARE NOT ARBITRARY
17 OR UNREASONABLE SHALL BE FINAL AND CONCLUSIVE.

18 C. THE STATE CERTIFICATION BOARD AFTER APPROVAL OF THE APPLICATION
19 SHALL NOT EXERCISE FURTHER CONTROL OF THE PROCEEDS OF ANY BOND ISSUE BUT THEY
20 SHALL BE CONTROLLED AND ADMINISTERED SOLELY BY THE APPLICANT AS PROVIDED IN
21 THIS CHAPTER.

22 Sec. 7. Emergency

23 This act is an emergency measure that is necessary to preserve the
24 public peace, health or safety and is operative immediately as provided by
25 law.

APPROVED BY THE GOVERNOR APRIL 26, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2010.